IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1070 OF 1999

Hemendra M. Kothari having his residence at 57, Sea View, Worli Sea Face, Mumbai - 400 018	Applicant
Vs.	
1) Shri W.S. Vaigankar, Assistant Director, Enforcement Directorate(FERA) Govt. of India, Janmabhoomi Chambers, 1st Floor, Walchand Hirachand Marg, Mumbai - 400 001	Respondents
2) State of Maharashtra	

Mr. Amit Desai with Shri Prakash Naik for Applicant.

Shri D.A. Nalawade for Respondent no. 1.
Ms. M.H. Mhatre, APP for the State.

CORAM : J.H. BHATIA, J.
DATE : 25TH APRIL, 2007

ORAL JUDGMENT

1) This is an application for quashing the order passed by the learned Sessions Judge, Pune in Criminal Revision Application no. 217 of 1996 in Case no. 3 of 1996 filed by the Respondent no. 1 who is Assistant Director of Enforcement

Directorate (FERA), against the petitioner.

2) The prosecution case in brief is that the present applicant was non Executive Director of M/s Kirloskar Brothers Limited, Pune. He was also working with M/s DSP Financial Consultants Ltd., Mumbai. On certain information received by the Directorate of Enforcement, Mumbai, search of office premises of Kirloskar Brothers Ltd. and its officers were undertaken and besides the other things, it was found that A.T.C. Pvt. Ltd. had paid amount of 30 Lacs to one Mr. M.M. Vaidya, Vice President of Kirloskar Brothers Ltd. and said M.M. Vaidya had made the payment of that amount to the present applicant, H.M. Kothari, in consideration of his making payment of 2 Lac Sterling Pound, to M/s PME Limited, London. In view of this, the complaint was filed against accused persons under Foreign Exchange Regulation Act, 1973, (FERA in brief). The present applicant moved an application before the Chief Judicial Magistrate to recall the process, but that application was rejected. Thereafter, he filed revision application dtd. 2/7/1996, which also came to be dismissed by the learned Additional Sessions Judge, Pune. Thereafter the applicant filed the present application under Section 482 of

Cr.P.C. seeking to quash the order passed by the learned Judge. Petitioner contends that there is no material to establish that he had received amount of Rs.30 Lacs for transferring amount of 2 Lac Pounds to P.M. Engines Ltd., London on behalf of M/s Kirloskar Brothers. According to him, there was nothing to show that the present applicant had violated any provisions of Foreign Exchange Regulation Act, 1973 and particularly Section 9(a) read with Section 56 of the said Act.

3) Heard Mr. Amit Desai, learned Counsel for the applicant and Mr. Nalawade, learned Special Public Prosecutor for respondent no.1.

4) Mr. Desai, learned Counsel for the applicant vehemently contended that there is no documentary evidence to prove that the present applicant had received amount of Rs.30 Lacs and that he had remitted amount of 2 Lac pounds to P.M. Engines Ltd., London in violation of Section 9 of the FERA. He further contended that the whole case is based on the statement made by M.M. Vaidya, through whom the payment was allegedly made to the present applicant. A.T.C. was clearing Agent of Kirloskar Group while Mr. Bhadkamkar was working with A.T.C.. Mr. Bhadkamkar is no more alive and

said M.M. Vaidya has retracted from his statement recorded before the Officers of the Enforcement Directorate. In view of this, there is no evidence and particularly there is no documentary or other evidence to corroborate the retracted statement made by M.M. Vaidya. During the arguments, Mr. Desai also placed on record an order passed by the Deputy Director of Directorate Enforcement on 21st July 2004 pending the present application. The Deputy Director is adjudicating authority under FERA. Mr. Desai pointed out that after detail hearing and perusal of the records the adjudicating authority under FERA had completely exonerated the present applicant. In view of this there is additional ground to quash the criminal proceedings. He contended that when the Department could not establish the allegations even in the departmental enquiry before the adjudicating authority, it would be impossible for the prosecution to prove the charges before the criminal Court where the standard of proof is much higher than the standard of proof expected and required in the adjudication proceedings. On the other hand, Mr.Nalawade, learned Counsel for the respondent-complainant vehemently contended that it is settled position that the adjudication proceedings and the prosecution are two independent

proceedings and they do not depend on each other and they can proceed independently. According to him the purpose of the adjudication before the adjudicating authority is only to impose certain penalty while before the Criminal Court, the accused is prosecuted for the criminal offence committed by him.

5) Before proceeding to discuss the different legal aspects raised by the learned Counsel for both the parties, it would be necessary to point out the findings of the adjudicating authority in its order dtd. 21st July 2004. The order passed by the adjudicating authority reveals that as a result of searches conducted on 9th December 1985 all over India against M/s Kirloskar Brothers Limited and various other sister concerns/subsidiaries as well as residence and office premises of their Directors and their employees, as many as 15 show cause notices were issued to M/s Kirloskar Brothers, its Directors and various Officers. Show cause Notice VIII was under Section 9(1)(f)(1) of the FERA on the allegation that the Company had made payment of Rs.30 Lacs to H.M. Kothari of M/S DSP Financial Consultants Limited, Mumbai for transferring the amount of 2 Lac Pounds to M/s P.M. Engines, Ltd. London.

During the search and other proceedings, the Officers of the Enforcement Directorate recorded statements of some persons. Relevant statements were of M.M. Vaidya, Bhadkamkar and R.D. Harshe of M/s A.T.C.. Their statements revealed that the amount was paid to the present applicant on behalf of M/s Kirloskar Brothers for transfer of amount of 2 Lac Pounds to P.M. Engines, London. In response to the notice, the applicant had denied all the contentions made against him. According to him, he was only non -Executive Director of M/s Kirloskar and had nothing to do with the transfer money or the transaction. The adjudicating authority came to the conclusion, after going through the record and evidence, that even though the present applicant was a non Executive Director, he had sufficient influence with M/s DSP Financial Consultants Ltd.. The adjudicating authority noted that Mr. R.D. Harshe Director of A.T.C. had stated in his statement dtd. 10/1/1986 that only amount of Rs.27 Lacs was paid to Mr. M.M. Vaidya in three instalments of Rs.4 Lacs on 8/8/1983, Rs.11 Lacs on 9/8/1983 and Rs.12 Lacs on 10/8/1983. He noted that the statement was contradictory to the allegations that amount of Rs.30 Lacs was paid to Mr. M.M. Vaidya by A.T.C. in three instalments of Rs.10 Lacs each. (He noted that

during the period when Mr. Vaidya had stated in his statement that he had received and paid the amount, according to Mr. H.M. Kothari he was travelling abroad). He noted that during the relevant period of August/Sept. 1983, the official rate of Sterling Pound was Rs.15.20 to 15.25, but as it was well known that unofficial rates were quoted at a significant premium, therefore the statement of Mr. Vaidya that Mr. H.M.Kothari had received Rs.30 Lacs to transfer 2 Lac Pounds at the rate of Rs.15/-, which is lower than even the official rate, destroyed the credibility of Mr. Vaidya's statement. He further noted that Mr. Harshe and Mr. Bhadkamkar had no direct knowledge about the payment of any amount by Mr. Vaidya to Mr. H.M.Kothari. Their statements were based on information given to them by Mr. Vaidya and as such their statements were nothing more than hearsay evidence. Further Mr. Bhadkamkar had expired and he was not available for the cross examination during the adjudicating proceedings. In view of this, the Enforcement Directorate was left with only the statement of Mr. Vaidya against the present applicant. Adjudicating authority noted that Mr. Vaidya had retracted his statement and therefore this statement was also not admissible. The Adjudicating authority found that

the culpability of Kirloskar Brothers and its management was established and therefore the statement of Mr. Vaidya could not be merely ticked off as a dictation by the Officers of the Enforcement. However, to the extent of the allegations against the present applicant, the adjudicating authority came to the conclusion that as there was no documentary or other evidence to connect the present applicant with the receipt of Rs.30 Lacs or the transfer of 2 Lac Pounds to P.M. Engines, London, merely the retracted statement of Mr. Vaidya was not sufficient to hold the applicant guilty. He held that the charge pertaining the transfer of 2 Lacs Pounds to P.M. Engines Limited by Kirloskar Brothers was established, but there was nothing on the basis of which the responsibility could be fastened against Mr. H.M. Kothari. In view of these circumstances, the adjudicating authority held that the charges against Mr. H.M. Kothari were not proved.

6) It is true that when the Additional Sessions Judge heard and disposed of the revision application filed by the applicant, the findings of adjudicating authority were not on record and they could not be considered because the adjudication

proceedings were still pending and the order came to be passed only on 21st July 2004. However, now the material, which is available before this Court, cannot be simply ignored.

7) Mr. Desai vehemently contended that it is settled position in law that whilst the pendency of adjudication proceeding is not a bar to the initiation or maintainability of a prosecution in respect of the same set of facts / transactions, in the event the departmental proceedings result in exonerating the noticee or dropping of the proceedings, that decision would have to be taken into account or into consideration by the criminal Court, whilst considering the continuation of the criminal proceedings or even conviction therein. He contended that in departmental proceedings the standard of proof is lower than the standard of proof required in a criminal prosecution and if with lower standard of proof, the department is unable to establish its case, it would be abuse of the process of the Court to continue the prosecution on the same set of facts. In support of this contention, he placed reliance on several authorities from Supreme Court, this High Court and several other High Courts under the different laws particularly the Income Tax Act, Customs Act,

Excise laws, FERA etc.

8) In **Uttam Chand and Ors. v. Income Tax Officer, Central Circle, Amritsar.** (1982), 2 SCC **543**. Supreme Court held as follows :

> "1.... In view of the finding recorded by the Income Tax Appellate Tribunal that it was clear on the appraisal of the entire material on the record that Shrimati Janak Rani was a partner of the assessee firm and that the firm was a genuine firm, we do not see how the assessee can be prosecuted for filing false returns. We, accordingly, allow this appeal and quash the prosecution."

9) In **K.T.M.S. Mohd. and anr. v. Union of India, (1992) 3 SCC 178** the Supreme Court was dealing with the subject at the stage of appeal against conviction under Income Tax Act and Indian Penal Code. By that time the Income Tax Appellate Tribunal had rejected the contentions of the departmental authority and had exonerated the appellants from Income Tax liability. The Supreme Court, in para Nos. 46, 48 and 49 observed as follows :

> "46. Mr. A.T.M. Sampath very strenuously contended that the convictions recorded by the subordinate courts as affirmed by the High Court under Sections 120-B read with 277 and 277 I-T Act are liable to be set aside in the teeth of the judgment of the Tribunal completely exonerating the appellants from the liability of the income tax. We shall examine this contention and

dispose of the same in the ratio of the decisions of this Court in P. Jayappan v. S.K. Perumal, (1985) 1SCR536; AIR 1984 SC 1693). In that case, the following dictum has been laid down (para 5 of AIR).

> "The criminal court no doubt has to give due regard to the result of any proceeding under the Act having a bearing on the question in issue and in a appropriate case it may drop the proceedings in the light of an order passed under the Act. It does not, however, mean that the result of a proceeding under the Act would be binding on the criminal court. The criminal court has to judge the case independently on the evidence placed before it."

"48. The above principle of law laid down by this court gives an indication that the result of the proceedings under the IT Act is one of the major factors to be considered and the resultant finding in the said proceeding will have some bearing in deciding the Criminal Prosecution in appropriate cases."

"49. It may not be out of place to refer to an observation of this Court in Uttam Chand v. I.T.O.., (1982) 133 ITR 909 wherein it was observed that the **prosecution once initiated may be quashed in the light of a finding favourable to the assessee recorded by an authority under the Act subsequently in respect of the relevant assessment proceedings**. But in Jayappan's case, it has been held that the decision in Uttam Chand's case is not an authority for the proposition that no proceedings can be initiated at all under Section 276(c) and Section 277 as long as some proceeding under the Act in which there is a chance of success of the assessee is pending. Though as held in Jayappan's case that a criminal Court has to judge the case before it independently on the materials placed before it, there is no legal bar in giving due regard to the result of the proceedings under the I.T. Act."

. After making above observations and in view of the fact that the Tribunal had held that the amount of Rs.6 Lacs was not owned by the first appellant in that case, as a very basis of the prosecution was completely nullified by the order of the Tribunal, which fact could be given due regard in deciding the question of criminal liability of the appellants, the Supreme Court set aside the conviction.

10) In **G.L. Didwania and anr. v. Income Tax Officer, 1995 Supp. (2) SCC 724**. The Supreme Court held in para 4, as follows :

> "4. In the instant case, **the crux of the matter is attracted and whether the prosecution can be sustained in view of the order passed by the tribunal**. As noted above, the assessing authority held that the appellant-assessee made a false statement in respect of income of M/s Young India and Transport Company and that finding has been set aside by the Income Tax Appellate Tribunal. **If that is the position then we are unable to see as to how criminal proceedings can be sustained.**"
>
> All these cases were under Income Tax Act.

11) In **ITC Ltd. V. Collector of Central Excise, 1996 (84) ELT 404**, which was under Central Excise Act, the Supreme Court held as follows in para (2) :

> "2. We do not find any ground to interfere

> with the majority opinion of the tribunal imposing penalty. **However, in view of the difference of opinion among members on the question of penalty, we direct, consequent upon the imposition of penalty, no prosecution could be launched against the assessee.**"

. In that case, there was difference of opinion among the Members of the Tribunal on the question of penalty. Taking into consideration this fact also, the Supreme Court held that no prosecution could be launched against the assessee.

12) In **Deputy Chief Controller of Imports and Exports vs. Roshanlal Agarwal** 2003 Cr. L.J. **1698**, under Imports and Exports Control Act, it was pointed out that Appellate Committee had allowed the appeals and the accused were exonerated. The Supreme Court observed :

> "13. Having regard to the materials existing against the respondent and the reasons and findings given in the aforesaid orders, we are of the opinion **that no useful purpose would be served by the trial of the accused- respondents in the criminal court at this stage**. The proceedings of the criminal cases instituted against the accused- respondents on the basis of the complaints filed by Deputy Chief Controller of Imports and exports are, therefore, quashed."

13) In **K.C. Builders and Anr. V. The**

Assistant Commissioner of Income Tax, 2004(2) SCC **731**, the Supreme Court quashed the criminal proceedings on the ground that the Income Tax Tribunal had given conclusive findings that there was no concealment of income. Their Lordship observed in para 25, as follows :

> "25. In our opinion, the appellants cannot be made to suffer and face the rigours of criminal trial when the same cannot be sustained in the eyes of law because the entire prosecution in view of a conclusive finding of the Income Tax Tribunal that there is no concealment of income becomes devoid of jurisdiction and under Section 254 of the Act, a finding of the Appellate Tribunal supersedes the order of the Assessing Officer under Section 143(3) more so when the Assessing Officer cancelled the penalty levied."

14) Mr. Nalawade, learned Counsel for the respondents contended that the Supreme Court had expressed its reservation about the correctness of the findings in K.C. Builders in Standard Chartered Bank v. Directorate of Enforcement and others, AIR 2006 SC 1301. According to him, the adjudicating proceedings and criminal proceedings are different and independent and the findings of one proceedings are not likely to affect the other. In Standard Chartered Bank, it was argued that unless an adjudication proceeding under Section 51 of the FERA is completed, the prosecution under

Section 56 of FERA cannot be initiated. This argument was rejected by the Supreme Court holding that both the proceedings can simultaneously be launched and can simultaneously be pursued. In para 22 in Standard Chartered Bank. Their Lordship of Supreme Court observed as follows, particularly about the decision in K.C. Builders :

> "22. The decision in K.C. Builders and another Vs. Assistant Commissioner of Income Tax (2004 (2) SCC 731) is clearly distinguishable. The Court proceeded as if under the Income Tax Act, the prosecution is dependent on the imposition of penalty. That was a case where the prosecution was based on a finding of concealment of income and the imposition of penalty. When the Tribunal held that there was no concealment, and the order levying penalty was cancelled, according to this Court, the very foundation for the prosecution itself disappeared. This Court held that it was settled law that levy of penalties and prosecution under Section 276-C of the Income Tax Act are simultaneous and hence, once the penalties are cancelled on the ground that there was concealment, the quashing of the prosecution under Section 276-C of the Income Tax Act was automatic. We have held already that on the scheme of FERA, the adjudication and the prosecution are distinct and separate. Hence, the ratio of the above decision is not applicable. That apart, there is merit in the submission of the learned Additional Solicitor General that the correctness of the view taken in K.C.Builders (supra) may require reconsideration as the reasoning appears to run counter to the one adopted by the Constitution Bench in Assistant Collector of Customs, Bombay vs. L.R. Melwani and another (supra) and in other decisions not referred to therein. For the purpose of these cases, we do not think it necessary to pursue this aspect further. Suffice it to say, that the ratio of that

decision has no application here."

15) Mr. Desai, however, vehemently contended that in the above passage from the Standard Chartered Bank, the Supreme Court had only expressed that the view taken in K.C. Builders may require the reconsideration as the reasoning appears to run counter to the one adopted by the Constitution Bench in Assistant Collector of Customs Bombay Vs. L.R. Melwani and Anr.. However, their Lordship did not pursue the matter further and held that the said ratio in K.C. Builders had no application to the Standard Chartered Bank.

16) According to Mr. Desai merely because the Supreme Court had expressed that K.C. Builders needs to be reconsidered, it cannot be said that the view taken in K.C. Builders has been reversed. In support of his contention, he placed reliance on numbers of authorities including Municipal Corporation of Delhi vs. Gurnam Kaur AIR 1989 SC 38, Krishena Kumar Vs. Balbir Singh, AIR 1990 SC 1782 and State of UP Vs. Synthetics and Chemicals Ltd., (1991) 4 SCC 139. In Municipal Corporation of Delhi Vs. Gurnam Kaur, the Supreme Court observed in para 10, as follows :

> "10. It is axiomatic that when a direction or order is made by consent of the parties, the Court does not adjudicate upon the rights of the parties nor lay down any principle. Quotability as 'law' applies to the principle of a case, its ratio decidendi. The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty because without an investigation into the facts, as in the present case, it could not be assumed whether a similar direction must or ought to be made as a measure of social justice. That being so, the direction made by this Court in Jamna Das' case could not be treated to be a precedent.....".

17) In **Prakash Industries Ltd. Vs. State and others [2004 Cr.L.J. 744**.], Delhi High Court observed in para 5, as follows :

> "5. It is highly preposterous to imagine that the contention raised before the Supreme Court in Nilamani's case which was referred to a larger Bench amounted to laying down a new law or reviewing the law laid down in K.M. Mathews' case. It is well settled principle and should be known to one and all that any law laid down by Hon'ble Supreme Court is, unless reversed or reviewed, binding on all the Courts in India including the High Courts. Mere reference by a Judge for reviewing the existing law to a Larger Bench does not and cannot take away the binding effect of the earlier decision of the Supreme Court."

18) Taking into consideration all these

authorities with utmost respect, it must be said that the observation made in **Standard Chartered Bank** do not reverse observation and law laid down in **K.C. Builders**. Unless the **K.C. Builders** is reconsidered and a contrary view is taken by the Supreme Court, it will continue to be binding authority.

19) It may be noted that relying on different authorities by the Supreme Court and other High Courts, in several cases, this High Court has also taken a view that when in the departmental proceedings the accused was exonerated by the adjudicating authority, the criminal proceedings should not be continued. In **Raichand C. Jain vs. Surendra Prasad, 2006 ALL MR (Cri) 1085**, in a proceeding under Section 56(1)(I) read with 9(1)(d) etc., FERA, this Court had held that when the applicant-accused was exonerated by the adjudicating authority, on the same set of facts, criminal proceeding could not be continued and therefore in the inherent power under Section 482 Cr.P.C., the criminal proceeding should be quashed.

20) In Ushanes Nrupendra Mehta vs. State of Maharashtra and Anr. 2004 ALL MR (Cri) 2129 which was also a case under FERA, in the appeal before

Customs, Excise & Gold (Control) (Appellate Tribunal), Constituted under the Customs Act, was allowed and the petitioner was fully exonerated in adjudication proceeding and the order exonerating petitioner was not challenged by the revenue. It was held that in such circumstances, prosecution based on the same evidence and charges was liable to be quashed.

21) It may be noted that in the present case the applicant was exonerated by the Dy. Director of Enforcement, who was adjudicating authority, in the adjudication proceedings. Admittedly that order was not challenged in appeal by the respondent and thus that order has become final. I have already noted the facts and findings of the adjudicating authority in detail. The adjudicating authority had clearly come to the conclusion that there was no material to hold the present applicant guilty for contravention of the provisions of FERA and he was completely exonerated. When in the departmental proceedings before the adjudicating authority, the department could not establish the charges, it is difficult to imagine how the department could prove the same charges before the criminal Court when the standard of proof may be much higher and stringent than the standard of

proof required in departmental proceedings.

22) Before concluding,, it would be necessary to find out whether the retracted statement of M.M. Vaidya could be sufficient to proceed with the criminal proceeding against the present applicant. The statement of M.M. Vaidya, Bhadkamkar and Harshe were recorded by the Officers of Enforcement Directorate under Section 39 or 40 of Foreign Exchange Regulation Act and not Section 108 of the Customs Act. In view of the provisions of Section 138(b) Customs Act, it is settled that the Officers of the Customs Department are not the Police Officers and the statement recorded by the Customs Officers under Section 108 are admissible in evidence.

23) Mr. Desai pointed that there is no provision in FERA comparable with Section 138(b) of the Customs Act. However, Mr. Nalawade pointed out that this question was considered by Madras High Court in **Deputy Director,Enforcement Directorate vs. Peer Mohamed Ali Jinnah, 1989 Cr.L.J. 2138** after comparing the provisions of the two Acts, Madras High Court held that under Section 40 of FERA, any Officer of Enforcement has powers to summon any person to give evidence or to produce

any documents during the course of investigation or proceeding and under Sub Section 4 of Section 40 such investigation or proceedings shall be deemed to be judicial proceedings within the meaning of Section 193 and 223 of Indian Penal Code. In view of this, the statement recorded by the Gazetted Officer of Enforcement under Section 40 are supposed to the statement recorded in judicial proceedings and admissible in evidence.

24) Even if the statement of witness recorded under Section 40, FERA is admissible in evidence, the question is whether a retracted statement of a witness before the Officer of the Enforcement is sufficient to prove the criminal charges against the accused. Mr. Desai vehemently contended that the Apex Court and several High Courts have from time to time held that confession of co-accused cannot be treated as substantive evidence against the other co-accused and cannot be made basis for conviction without any corroboration.

25) In **Haricharan Kurmi and Anr. v. State of Bihar, AIR 1964 SC 1184**, Supreme Court in para 16, observed as follows :

> "16..... As we have already indicated, it has been a recognised principle of the

> administration of criminal law in this country for over half a century that the confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of its conclusions deducible from the said evidence. In criminal trials, there is no scope for applying the principle of moral conviction or grave suspicion. In criminal cases where the other evidence adduced against an accused person is wholly unsatisfactory and the prosecution seeks to rely on the confession of a co-accused person, the presumption of innocence which is the basis of criminal jurisprudence assists the accused person and compels the court to render the verdict that the charges are not proved against him, and so, he is entitled to the benefit of doubt."

26) In **Kashmira Singh v. The State of Madhya Pradesh, AIR 1952 SC 159**, the Supreme Court dealt with a question of corroboration of accomplices and approvers in para 12, as follows :

> "12. Then, as regards its use in the corroboration of accomplices and approvers. A co-accused who confesses is naturally an accomplice and the danger of using the testimony of one accomplice to corroborate another has repeatedly been pointed out. The danger is in no way lessened when the "evidence" is not on oath and cannot be tested by cross-examination. Prudence will dictate the same rule of caution in the case of a witness who though not an accomplice is regarded by the Judge as having no grater probative value. But all these are only rules of prudence. So far as the law is concerned, a conviction can be based on the uncorroborated testimony of an accomplice provided the judge has the rule of caution, which experience dictates, in mind and gives reasons why he thinks it would be safe in a given case to disregard

> it. Two of us had occasion to examine this recently in Rameshwar v. The State of Rajasthan ([1952] S.C.R. 377). It follows that the testimony of an accomplice can in law be used to corroborate another though it ought not to be so used save in exceptional circumstances and for reasons disclosed".

27) Again reiterating the said principle in Natthu v. State of Uttar Pradesh, AIR 1956 C 56, their Lordship observed as follows in para 5 :

> "5. ... The question how far the confessions of co-accused, could be treated as evidence against an accused was considered elaborately in -- 'Kashmira Singh v. State of Madhya Pradesh', MANU/SC/0031/1952 and it was held therein that such statements, were not evidence as defined in Section 3 of the Evidence Act, that no conviction could be founded thereon, but that if there was other evidence on which a conviction could be based, they could be referred to as lending assurance to that conclusion and for fortifying it."

28) This Court in Gopal Govind Chogale v. Assistant Collector of Central Excise and Anr., 1985 Cr. L.R. (Mah) 495 and several other cases has taken a view that the statement of an accomplice is not sufficient to base a conviction unless there is corroboration to the same.

29) In the present case, statements of Mr. Bhadkamkar and Mr. Haresh, the two Officers from A.T.C., is only hearsay evidence and Mr.

Bhadkamkar is no more alive. According to them, Mr. Vaidya had received Rs.30 Lacs or Rs.27 Lacs from A.T.C. and from Mr. Vaidya they had come to know that the amount was paid to the present applicant. Therefore, no importance could be given to the statements of those two persons. Mr. Vaidya made a statement implicating himself as well as the present applicant, but later on he retracted from that statement and admittedly there is no documentary or other evidence to provide any corroboration to the said statement of Mr. Vaidya. As such there is no material on the basis of which the prosecution would have any chance of success in criminal case. As pointed out above, in view of the same circumstances, the adjudicating authority under FERA has completely exonerated the present applicant and it is impossible that with the same set of evidence, as pointed out above, the applicant can be convicted in the criminal proceedings. Therefore, in my opinion, it is a fit case to invoke inherent restrictions to avoid abuse of process under Section 482 of Cr.P.C.

30) In the result, the application is allowed. The criminal proceedings in case No. 3 of 1986 before learned Chief Judicial Magistrate, Pune are

hereby quashed.

(J.H. BHATIA, J.)